



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 271

[FRL-9646-5]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is granting Ohio final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The agency published a proposed rule on September 14, 2011 at 76 FR 56708 and provided for public comment. The public comment period ended on October 14, 2011. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization. We now make a final decision to authorize Ohio's changes through this final action.

DATES: The final authorization will be effective on *[Insert date of publication in the Federal Register]*.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R05-RCRA-2011-0530. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some of the information is not publicly available, *e.g.*, Confidential Business Information or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy. You may view and copy Ohio's application from 9:00 am to 4:00 pm at the following addresses: U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886-7450; or Ohio Environmental Protection Agency, Lazarus Government Center, 50 West Town Street, Suite 700, Columbus, Ohio, contact: Kit Arthur (614) 644-2932.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450, e-mail westefer.gary@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, States must change their programs and request EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly,

States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the state is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

The effect of this decision, once finalized, is that a facility in Ohio subject to RCRA would have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Ohio has enforcement

responsibilities under its state hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. do inspections, and require monitoring, tests, analyses or reports; and
2. enforce RCRA requirements and suspend or revoke permits
3. take enforcement actions regardless of whether the state has taken its own actions

This action will not impose additional requirements on the regulated community because the regulations for which Ohio is being authorized are already effective, and will not be changed by EPA's final action.

D. Proposed Rule

On September 14, 2011 (76 FR 56708), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Ohio's hazardous waste program and opened our decision to public comment. The agency received no comments on this proposal. EPA found Ohio's RCRA program to be satisfactory.

E. What Has Ohio Previously Been Authorized for?

Ohio initially received final authorization on June 28, 1989, effective June 30, 1989 (54 FR 27170) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 8, 1991, effective June 7, 1991 (56 FR 14203) as corrected June 19, 1991, effective August 19, 1991 (56 FR

28088); July 27, 1995, effective September 25, 1995 (60 FR 38502); October 23, 1996, effective December 23, 1996 (61 FR 54950); January 24, 2003, effective January 24, 2003 (68 FR 3429); January 20, 2006, effective January 20, 2006 (71 FR 3220), and October 29, 2007, effective October 29, 2007 (72 FR 61063).

F. What Changes Are We Proposing with Today's Action?

On May 9, 2011, Ohio submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, that Ohio's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we are granting Ohio final authorization for the following program changes (a table with the complete state analogues is provided in the September 14, 2011 proposed rule):

Amendments to Land Disposal Restrictions for First Third Scheduled Wastes

Checklist 50.1, February 27, 1989 (54 FR 8264);

Changes to Part 124 Not Accounted for by Present Checklists, Checklist 70,

April 1, 1983 (48 FR 14146); June 30, 1983 (48 FR 30113); July 26, 1988

(53 FR 28118); September 26, 1988 (53 FR 37396); January 4, 1989 (54 FR 246);

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste

Combustors; Technical Corrections, Checklist 188.1, May 14, 2001 (66 FR 24270);

NESHAPS: Interim Standards for Hazardous Air Pollutants for Hazardous Waste

Combustors (Interim Standards Rule), Checklist 197, February 13, 2002 (67 FR 6792);

NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors;
Final Rule, Checklist 198, February 14, 2002 (67 FR 6968);

Hazardous Waste Management System; Definition of Solid Waste; Toxicity
Characteristic, Checklist 199, March 13, 2002 (67 FR 11251);

NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors –
Corrections, Checklist 202, December 19, 2002 (67 FR 77687);

Hazardous Waste Management System; Identification and Listing of Hazardous Waste;
Recycled Used Oil Management Standards, Checklist 203, July 30, 2003 (68 FR 44659);

Hazardous Waste – Nonwastewaters From Production of Dyes, Pigments, and Food,
Drug and Cosmetic Colorants; Mass Loadings-Based Listing; Final Rule, Checklist 206,
February 24, 2005 (70 FR 9138);

Hazardous Waste – Nonwastewaters From Production of Dyes, Pigments, and Food,
Drug and Cosmetic Colorants; Mass Loadings-Based Listing; Correction,
Checklist 206.1, June 16, 2005 (70 FR 35032);

Hazardous Waste Management System, Modification of the Hazardous Waste Manifest
System; Final Rule, Checklist 207, March 4, 2005 (70 FR 10776);

Hazardous Waste Management System, Modification of the Hazardous Waste Manifest System; Correction, Checklist 207.1, June 16, 2005 (70 FR 35034);

Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB, Checklist 208, June 14, 2005 (70 FR 34538);

Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB; Correction, Checklist 208.1, August 1, 2005 (70 FR 44150);

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures; (“Headworks Exemptions”), Checklist 211, October 4, 2005 (70 FR 57769);

National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Checklist 212, October 12, 2005 (70 FR 59402);

Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations, Checklist 214, July 14, 2006 (71 FR 40254);

EQUIVALENT STATE INITIATED CHANGES

Ohio Amendment	Description of Change	Sections Affected and Effective Date
Rule Review per 119.032		OAC 3745-50-31; 3745-50-47; 3745-54-56; 3745-54-77 Effective May 13, 2007

Housekeeping Rules Set I

OAC 3745-50-10;
3745-50-11; 3745-50-40
3745-50-51; 3745-50-235;
3745-51-03; 3745-51-04;
3745-51-05; 3745-51-20;
3745-51-22; 3745-51-24;
3745-51-30; 3745-51-35;
3745-51-38; 3745-52-10;
3745-52-21; 3745-52-27;
3745-52-32; 3745-52-33;
3745-52-34; 3745-52-41;
3745-52-54; 3745-53-20;
3745-53-21; 3745-54-18;
3745-54-71; 3745-54-72;
3745-54-98; 3745-55-47;
3745-55-90; 3745-55-99;
3745-57-14; 3745-57-83;
3745-57-91; 3745-65-72;
3745-66-41; 3745-66-90;
3745-67-73; 3745-68-14;
3745-68-40; 3745-256-100;
3745-266-80; 3745-266-103;
3745-266-106; 3745-270-01;
3745-270-40; 3745-270-48;
3745-279-44; 3745-279-53;
3745-279-55; 3745-279-63
Effective February 16, 2009

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Ohio will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

I. How Does Today’s Action Affect Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in “Indian Country,” as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Ohio;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country.

J. What Is Codification and Is EPA Codifying Ohio’s Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the Code of Federal

Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Ohio's rules, up to and including those revised June 7, 1991, as corrected August 19, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162) . We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

K. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

3. Regulatory Flexibility Act

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I

certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.)

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Because this rule authorizes pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until sixty (60) days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final authorization will be effective [Insert date of publication in the Federal Register].

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 29, 2012

Susan Hedman
Regional Administrator, Region 5

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